

# CHESHIRE EAST COUNCIL

## REPORT TO: AUDIT & GOVERNANCE COMMITTEE

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**Date of Meeting:** 30<sup>th</sup> January 2014  
**Report of:** Customer Relations and Compliance Manager  
**Subject/Title:** Compliance with Data Protection Act (1998),  
Freedom of Information Act (2000) and Environmental  
Information Regulations (2004)  
**Portfolio Holder:** Councillor David Brown

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### **1.0 Report Summary**

- 1.1 This report provides an update on how Cheshire East Council fulfils its obligations under Data Protection (DP) and Freedom of Information (FOI) legislation (including the Environmental Information Regulations (EIR)). It also highlights volumes of requests, trends and current and future issues.

### **2.0 Decision Requested**

- 2.1 That the Committee notes the arrangements in place to ensure compliance with the legislation.

### **3.0 Reasons for Recommendations**

- 3.1 In order to form an opinion on the Council's compliance with this legislation, the Audit and Governance Committee needs to gain assurance that there are effective arrangements in place to fulfil FOI, EIR and DP requests and that future issues are being anticipated and effectively managed.

### **4.0 Wards Affected**

- 4.1 All wards.

### **5.0 Local Ward Members**

- 5.1 Not applicable.

### **6.0 Policy Implications including - Carbon reduction - Health**

- 6.1 Compliance with FOI and DP legislation is integral to effective management of information within the Authority. FOI legislation and Environmental Information Regulations make public bodies open and transparent, whilst DP legislation protects personal data from improper use. It is essential, therefore, that all relative policies and procedures take account of these regulations.

## **7.0 Financial Implications**

- 7.1 Failure to comply with the legislation can lead to large fines being imposed on the Council. The current maximum penalty for breach of Data Protection or non-compliance is £500,000. Non-compliance with Freedom of Information can lead to enforcement action by the Information Commissioner or possibly costly court proceedings and reputational damage.

## **8.0 Legal Implications (Authorised by the Borough Solicitor)**

- 8.1 The legislation covered by this report forms the core of information law within England and contains detailed provisions with which public bodies, including the Council, must comply. The Information Commissioner (ICO) is the regulator for these matters and there are regulatory powers, including criminal sanctions, which can be used in cases of non-compliance.

An authority may be breaching the Freedom of Information Act if any of the following takes place:

- i) failure to respond adequately to a request for information;
- ii) failure to adopt the model publication scheme, or to publish the correct information; or
- iii) deliberate destruction, concealment or alteration of requested information to prevent it being released.

Depending on the nature of the incident, this last point is the only criminal offence in the Act (Section 77) that an authority or its individual members of staff could be charged with. The penalty is a fine. Other breaches of the Act are unlawful but not criminal.

The ICO cannot fine an authority for failure to comply with the Act, nor can they require the authority to pay compensation to anyone for breaches of the Act. However any mistakes should be rectified as soon as the authority is made aware of them. If a complaint is not resolved informally the ICO may issue a decision notice.

The ICO issues decision notices on complaints about specific requests for information. However, if a breach of the Act doesn't fall within the scope of a decision notice, the ICO may decide to issue an enforcement notice. The Commissioner may also use an enforcement notice if an authority is repeatedly failing to comply with its obligations. An authority can be found in contempt of court for failing to comply with a decision notice, enforcement notice, or information notice. This could lead to a fine or, in theory, jail for a senior officer of the authority.

## **9.0 Risk Management**

- 9.1 The impact on the Council of not complying with the legislation would be significant, as identified above in 7.1 and 8.1.

## 10.0 Background and Options

- 10.1 The tables below show the number and sources of requests received in 2013 (Jan-Dec) and the Services/Directorates to which they related. Figures are provided for 2012 and 2011 for comparison.

**Table 1**

TYPE OF REQUEST	2013	2012	2011
FOI/EIR requests	1614 <sup>1</sup>	1487	1343
DP requests	619 <sup>2</sup>	467	421
<b>TOTAL</b>	<b>2233</b>	<b>1954</b>	<b>1764</b>

**Table 2**

SOURCE	2013	2012	2011
Individuals	50%	37%	36%
Public Sector	9%	20%	26%
Commercial	18%	18%	17%
Press/Media	10%	13%	15%
Pressure Groups	5%	5%	4%
'What do they know' <sup>3</sup>	6%	5%	-
MP's/Councillors	2%	2%	2%

**Table 3**

SERVICE/DEPARTMENT	2013	2012	2011
Places	48%	35%	27%
Finance	18%	29%	34%
People	25%	26%	23%
HR	5%	4%	8%
Legal and Democratic Services	2%	3%	5%
Performance, Capacity and Customer Services	1%	2%	3%
Shared Services	1%	1%	-

## 11.1 Freedom of Information Requests

Freedom of Information requests continue to increase year on year, and the Council received a number of particularly complex requests in 2012 and 2013. Information is withheld in only a small number of cases (48 out of 1614 requests in 2013). In some cases, only certain aspects of the information are withheld.

<sup>1</sup> In addition to these requests, the Council received 1054 property search requests (863 in 2012), which are treated as requests under EIR.

<sup>2</sup> 355 of the requests were requests to Council Tax from various public authorities, requesting confirmation of address details (269 in 2012)

<sup>3</sup> Website dedicated to Freedom of Information requests

The main reasons for refusing information in this period were as follows:

- the information requested is not held
- all the information requested cannot be provided within the 18 hour limit and a fees notice is issued for the remaining information
- it is personal information
- it is commercially sensitive
- it is draft/in the process of being completed
- it is subject to legal professional privilege

Most of the exemptions available to public authorities under Freedom of Information are subject to a public interest test, i.e. does the public interest in disclosure outweigh the public interest in withholding it? There is a presumption in favour of disclosure, i.e. that it is in the public interest generally to disclose information, in order to promote transparency and accountability, and the Information Commissioner requires cohesive and comprehensive arguments from the Council for withholding information, should requestors submit an appeal.

## **11.2 Referrals to Information Commissioner during 2013**

We received 13 referrals from the Information Commissioner during 2013. Four of the cases were from two requestors.

- 2 cases related to information being disclosed outside the regulatory timescale. Both responses were subsequently issued.
- 1 case related to the amount of information provided. The requestor had been provided with as much information as possible within the 18 hour timescale and a Fees Notice was issued to provide the additional information. Our decision was upheld by the ICO.
- 10 cases related to information which had been withheld. 3 of these were upheld, by the ICO, 3 were partially upheld and 4 are ongoing.

## **11.3 Protection of Freedoms Act 2012, Open Data and Transparency**

The Freedom of Information Act (FOIA) requires every public authority to publish information proactively, as well as responding to requests for information. In accordance with the Act, the Council has a Publication Scheme and currently provides a variety of information under this scheme. Services are encouraged to routinely publish information on the website to make it easier for requestors to access the information they require without having to submit an FOI request.

The Protection of Freedoms Act 2012 added new provisions to FOIA regarding datasets. It has extended rights under FOIA by requiring that datasets are made available in a reusable format. This is in accordance with Government initiatives to increase transparency within the public sector, to ensure that all data published by public bodies is in an open and standardised format, so that it can be re-used easily and with minimal cost by third parties. These datasets must also be made available in the

Publication Scheme. The new provisions are about how, rather than what, information is released. If it is a relevant copyright work, i.e. one for which the Council owns the copyright and database rights, then it must be provided under the terms of a specified licence.

The Council has stated its commitment to being open, honest and accountable regarding all decisions, actions and outcomes, and the Transparency Project has been launched in order to review the Council's current Publication Scheme, and to highlight areas where more information should be published. A key output of this will be the publication of a Freedom of Information Disclosure Log, outlining all the FOI requests received by the Council and the responses issued. In 2013, over 90% of the requests received were responded to within 20 working days, and, with increased transparency, more proactive publication of information and improved processes, it is anticipated that numbers of requests may reduce, or at least start to stabilise.

## **12.0 Data Protection**

### **12.1 Subject Access Requests**

Subject Access Requests increased from 198 in 2012 to 264 in 2013 (excluding requests made to Council Tax for confirmation of address details). Requests for access to Social Care files have increased significantly and responding to these is particularly time and labour intensive, because of the volume and sensitivity of the information requested.

### **12.2 Information Assurance**

The Information Assurance Framework has been developed further during 2013. This is published on the Intranet and includes policies, processes, governance arrangements, guidance materials and training, with a view to ensuring that information is dealt with legally, securely and efficiently, and assuring the quality, confidentiality, integrity and availability of all information. The policy sets out the Council's commitment to ensuring transparency, whilst minimising the risk of information being compromised, and providing confidence that personal information is being properly handled.

### **12.3 Data Protection Training and Awareness**

Data Protection training is a mandatory requirement for all members of staff through the Performance Management process.

A significant amount of training and awareness in Data Protection has been delivered across the organisation in the last two years. This has included an external training provider delivering formal training to approximately 300 senior managers, as well as a number of training and awareness sessions delivered by the Data Protection Officer to Service Areas. The Data Protection Officer also delivers a presentation at Corporate Induction, covering all aspects of data handling from record keeping, security, data protection and freedom of information.

## **12.4 Advice and Guidance**

Advice and guidance on data protection issues is provided to all areas of the organisation, including advice on fair processing statements to disclosure or sharing of sensitive information and review of data sharing agreements. Additionally, there is close liaison with Internal Audit regarding the National Fraud Initiative.

## **13.0 Access to Information**

- 13.1 The background papers relating to this report can be inspected by contacting the report writer:

Name: Sandra Smith  
Designation: Customer Relations and Compliance Manager  
Tel No: 01270 685865  
E-mail: [sandra.smith@cheshireeast.gov.uk](mailto:sandra.smith@cheshireeast.gov.uk)